



Appeal Decision

Site Visit made on 9 November 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2021

Appeal Ref: APP/K1128/W/21/3279730

Barby Lodge, Cleveland Drive, Bigbury On Sea TQ7 4AY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Johnathon and Jen Marshall against the decision of South Hams District Council.
 - The application Ref 2828/20/FUL, dated 7 September 2020, was refused by notice dated 3 June 2021.
 - The development proposed is Replacement Dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for Replacement Dwelling at Barby Lodge, Cleveland Drive, Bigbury On Sea TQ7 4AY in accordance with the terms of the application, Ref 2828/20/FUL, dated 7 September 2020, and subject to the conditions set out in the schedule to this decision.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in July 2021. However, as the appeal was submitted after this, the main parties had the opportunity to comment on its relevance to the appeal proposal. Consequently, no parties will have been prejudiced by my having regard to the latest version in reaching my decision.
3. Third parties have submitted a number of images with the proposed development superimposed on them. However, as the submitted images are not labelled as being drawn to scale, I cannot be certain that they are an accurate representation of the appeal proposal. I have therefore placed limited weight on such images and have determined the appeal on the basis of the scaled plans submitted by the appellants and which formed the basis of the Council's determination of the planning application.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the character and appearance of the surrounding area; and
 - the living conditions of adjoining occupiers, with particular regard to outlook and privacy at the properties known as Durley Dene, Willows and Highfield.

Reasons

Character and appearance

5. Forming a corner plot which fronts Cleveland Drive and Parker Road, the appeal site contains a semi-detached bungalow situated within the built-up part of Bigbury on Sea and surrounded by a number of properties. Despite being laid out in a grid form and generally stepping down in line with the sloping topography, the area contains little in the way of obvious building lines involving more than the limited occasional consistency between two or three properties. Although the locality contains several bungalows, including the adjoining property, Durley Dene, the surrounding residential area is also characterised by built form of various sizes and designs. This includes properties of different ages and ranging from some generally unaltered single-storey bungalows, to various extended and chalet-style bungalows with accommodation in roofs and dormer additions, and some larger two-storey properties. This variety is highlighted by the Bigbury on Sea Village Study within the Bigbury Neighbourhood Plan 2019-2034 (BNP), which sets out that although some of the original 1910s chalet style buildings remain, the village has evolved, with many bungalows built in the 1960-70s and further developments of various architectural styles from the 1990s onwards.
6. With an increased footprint, ridge and eaves height and, amongst other aspects, a greater internal floorspace than the existing bungalow, the proposed development would result in a larger and more prominent building on the site. Despite the footprint not increasing significantly, the proposed building would therefore clearly have a greater presence, scale and mass than the existing bungalow. However, the significant increase in floorspace would be chiefly provided by utilising the space in the pitched roof for the first-floor accommodation and building down into the site for the lower ground floor.
7. Although it would have three floors, the appeal proposal would therefore have a lesser height, scale and mass than a full three-storey building and would instead read as a smaller, chalet-style property with basement, not dissimilar to some other surrounding properties. Despite it extending further to the rear than the existing bungalow, the footprint and position of the replacement dwelling would also respect the area's planned form and layout. In addition, with Durley Dene's extensions and alterations meaning that it does not mirror the existing bungalow at Barby Lodge, the proposed development and its set back nature could not reasonably be described as disrupting the buildings' relationship to the detriment of the streetscene.
8. The ridge of the replacement dwelling would be higher than the ridge of Durley Dene. However, the difference would neither be significant nor, with only those two properties on that side of Cleveland Drive, especially notable or inconsistent. Being lower than the other adjoining property of Willows, the appeal proposal would also maintain the stepped nature of built form down Parker Road, which is an important part of the area's character. The overall height would also be consistent with the general roof heights in the locality.
9. Accordingly, and combined with boundary treatment – including soft landscaping – screening much of the proposed dwelling and its extensive areas of elevated decking except through the proposed accesses, the appeal proposal would not appear as an unacceptably prominent or bulky feature in the streetscene. Although it would have a contemporary appearance, its extent of

glazing – and thus any resulting light pollution – would not be excessive, particularly in relation to its built-up locale, and its design would suitably relate to its surroundings. In coming to this view, I have taken into account the size of the site, the proposed materials, including the slate effect PV tiles on the front elevation, the extent of the decking and space for soft landscaping on the site, the Dark Sky designation of the area and that some extensions and alterations in the locality were undertaken prior to the BNP being adopted.

10. The site is located within the South Devon Area of Outstanding Natural Beauty (AONB) and Heritage Coast. However, the Council have not alleged the proposed development would harm either of these designated areas and its Officer Report identifies that, by retaining many of the features required by the BNP, such as natural hedges and grass verges, and through the use of suitable materials, the proposal would blend more quickly into its context and would conserve and enhance the landscape qualities of the AONB. Having considered the development and visited the site, I concur.
11. For the above reasons, I conclude that the proposed development would not harm the character and appearance of the surrounding area. I therefore find that it accords with Policy DEV20 of the Plymouth and South West Devon Joint Local Plan 2014-2034 (JLP) and BNP Policy BP7. Amongst other aspects, these require development to meet good standards of design, be locally distinctive, have regard to the design guidance in the BNP's village studies, reflect and contribute positively to the context and the character and appearance of the surrounding area, and not result in unreasonable levels of light pollution. The proposal would also be consistent with the provisions in the Framework in relation to achieving well-designed places.
12. General design principles for new housing development included in the BNP Village Study for Bigbury on Sea seek, amongst other aspects: to reduce or maintain the height of roofs unless the increase in roof height is consistent with that of neighbouring properties; to retain front building lines where there is a consistent and obvious building line; avoid excessive amounts of glazing; and the provision of soft landscaping along frontages. However, as I have found above, the proposed building's roof height would be consistent with that of neighbouring properties, there is no obvious or consistent building line in the locality, the glazing would not be excessive and the site's frontages would include soft landscaping. Accordingly, the appeal proposal also demonstrates sufficient regard to the BNP's design guidance for the village.

Living conditions

13. The site is located within a built-up residential area with several properties in relatively close proximity. There is therefore a certain amount of mutual overlooking, such as from the lounge side-window and elevated front patio of Durley Dene down towards the front part of the appeal site. I observed on my site visit that, due to the topography and limited boundary treatment, parts of some plots are also reasonably visible in public views, such as Highfield, with its window serving the kitchen diner and parts of its garden visible from Parker Road. However, despite the limited degree of separation between existing buildings, properties in the locality generally benefit from good outlook and views, including of the beach, sea and coastline.
14. The appeal proposal would bring built form of a greater scale and height closer to Durley Dene. The proposed dwelling would also project further to the rear

than the existing. However, it would not appear as an unacceptably dominating feature from Durley Dene, including from its bedroom window and rear patio, because its additional height and depth would not be particularly significant and would be mitigated by the pitched roof, while it would also be set back from the shared boundary. In addition, the rear garden of Durley Dene would extend beyond the rear of the proposed development and away from it. Furthermore, Durley Dene is orientated so that its main outlook faces towards the coast and Burgh Island, and its elevated front patio and fenestration in its front elevation make use of this aspect. The appeal proposal would not therefore unacceptably affect the outlook from Durley Dene.

15. The appeal proposal would also bring built form of a greater height closer to Willows. However, the additional height and depth of the proposed development, including in relation to its eaves and ridge, would not be particularly notable from Willows due to that property's elevated position and the pitch roof design of the proposed development. Willows' orientation, with its flank wall facing the site and only containing one window which serves a bathroom, means that its main outlook is also to the south-east rather than towards Barby Lodge, while its rear garden extends beyond and away from the site. Accordingly, the proposed dwelling would neither appear as a dominating feature nor result in an unacceptable loss of outlook from Willows. In coming to this view, I have taken into account the rear conservatory that is being built at that property.
16. Given the degree of separation to Highfield and the limited extra height of the proposed dwelling compared to the existing bungalow, the proposal would also neither appear as a dominating feature nor significantly harm the outlook from Highfield. The overall scale and mass of the proposed dwelling and the drop in levels between the site and Highfield do not lead me to a different conclusion.
17. There would be three side windows in the replacement dwelling facing Durley Dene. However, the submitted plans show the windows as almost entirely obscure glazed and this could be secured by a suitably worded planning condition. The proposed side windows would therefore not result in significant overlooking of Durley Dene. In coming to this view, I have taken into account the limited potential for some restricted views out of the clear-glazed top opening section of the first-floor window. With the rear windows in the proposed dwelling facing the rear of the site, any overlooking from them towards Durley Dene would also be limited to oblique views and would not be unacceptable given the area's built up nature. Any perception of being overlooked does not lead me to a different conclusion.
18. The elevated decking proposed at the front would allow for some views towards the front part of Durley Dene, including its lounge window which faces towards the site and its elevated front patio. However, there is already a certain amount of mutual overlooking, with the existing situation allowing views from that window and patio towards the front part of the site. There is also currently an elevated area at the front of Barby Lodge, in a similar position as the proposed front decking area, and it seems to me that there is no reason why it could not be used for more than simply providing access to the existing property should the occupiers wish to do so. Accordingly, and given the largest part of the front decking area would also be positioned behind the proposed dwelling's front projection and away from Durley Dene, the proposed decking would not result in unacceptable overlooking of Durley Dene.

19. There would be some first-floor windows facing towards Willows. However, the angle of the rooflights would mean that the main views available from those windows would be towards the sky while the windows in the rear wall of the proposed development would face towards the flank wall of Willows, which includes only one window serving a non-habitable room. Accordingly, and combined with the elevated position of that property and the boundary treatment on the shared boundary, the appeal proposal would not result in an unacceptable level of overlooking of Willows, including in relation to its back garden, lounge and the conservatory which is currently under construction. Any perception of being overlooked does not lead me to a different conclusion.
20. The development would include decking and fenestration on its side elevation facing Highfield. Although the proposed decking and ground-floor windows on that elevation would be screened by boundary treatment on the site, as shown in the proposed elevations, the large first-floor window with Juliet balcony would provide views of Highfield, including parts of its garden and the window serving its kitchen diner. However, that part of Highfield's garden and its kitchen diner window are, as I have found above, already rather overlooked. The addition of one side window would not therefore result in a significant change in overlooking of Highfields in relation to the existing context.
21. Although less than that recommended in the JLP Supplementary Planning Document when allowing for differences in ground levels, the degree of separation between the proposed first-floor side window and Highfields would also limit the extent of overlooking of that property. In addition, given the elevated position of the site and the proposed side window, it seems to me that any views into Highfield's kitchen diner would be restricted to limited parts of it, while the attention of the occupiers of the proposed development would be likely to be focused on the views of the coast and sea from that window rather than towards surrounding properties. Accordingly, the appeal proposal would not result in an unacceptable level of overlooking of Highfields.
22. Although the Council's reasons for refusal do not allege that the proposed development would result in a loss of light/sunlight or views from surrounding properties, it has been put to me that the replacement dwelling would result in light pollution and some adjoining properties receiving less daylight and sunlight, being overshadowed and losing some views of the surrounding area. However, having visited the site and considered the development and the position and orientation of built form surrounding the site, I am satisfied that the replacement dwelling would not result in significant light pollution that would harm neighbouring occupiers nor an unacceptable reduction in the levels of daylight or sunlight in adjoining plots. The submitted drawing showing 25 and 45 degree angles also confirms this.
23. Amongst other aspects, BNP Policy BP7 sets out that development should not have an unacceptable impact on the living conditions of occupiers of neighbouring properties through loss of important views. However, the BNP does not define 'important views' in relation to Policy BP7, and the submitted evidence indicates that the development would not affect the important views shown in BNP Proposals Map 3 or Appendix 12 and covered in Policy BP22.
24. Nevertheless, I recognise, as set out in the BNP Village Study for Bigbury on Sea, that individual views are important to the community and that BNP Policy BP7 includes views as one element of residents' living conditions. I note that

the Village Study also identifies that the planned development in the village was designed to ensure that the occupiers of all properties would have the advantage of good views of the beach, sea and coastline, and that the local community consider that the ethos behind this existing planned development should be protected and any new development should fully respect this important concept. However, in this case, I observed on my site visit that the main – and to my mind most important – views from Durley Dene and Willows are not those that the development would affect. This is because the views that the development would reduce – of a part of Burgh Island and the sea from Willows and of the hills of Bantham from the rear of Durley Dene – are already significantly limited by existing built form. Whereas the greatest, most expansive views from those properties – towards extensive areas of coast and sea to the south-east and south-west respectively – would not be significantly affected by the appeal proposal. Accordingly, the proposed development would not harm important views of neighbouring occupiers.

25. For the above reasons, I conclude that the proposed development would not harm the living conditions of adjoining occupiers. I therefore find that it accords with JLP Policy DEV1 and BNP Policy BP7. Amongst other aspects, these: require development to safeguard the residential amenity of local communities through ensuring that development does not have an unacceptable impact on the living conditions of adjoining occupiers in relation to matters such as daylight, sunlight, outlook, important views and privacy; and set out that unacceptable impacts will be judged against the level of amenity generally in the locality. The proposal would also be consistent with the provisions in the Framework in relation to achieving a high standard of amenity for existing users.

Other matters

26. I recognise that the proposal has generated considerable interest, with a significant number of consultation responses submitted in response to the planning application and further representations submitted at appeal, including from residents, the Parish Council and the Bigbury Neighbourhood Plan committee. I note that there is also concern that the development would be contrary to the BNP, which residents have indicated they are committed to. However, for the above reasons, I am satisfied that the appeal proposal would neither be contrary to the BNP and its guidance for development of the village nor undermine the process of drawing up the neighbourhood plan.
27. A number of other matters have been raised by interested parties and I have taken them all into account. This includes matters such as: noise disturbance including from the plant room and the raised decking area; odour/smells; highway safety; the limited headroom in the roofspace; the number of rooms in the proposed dwelling providing office/study space; statements within the appellants' appeal documents; the potential to upgrade Barby Lodge without demolishing it and constructing a replacement; the development setting a precedent; and the appellants' level of engagement with surrounding residents and the Parish Council. However, whilst I take these representations seriously, I have not been presented with compelling evidence to demonstrate that the appeal proposal would result in unacceptable effects in relation to any of these matters. Consequently, they do not lead me to a different overall conclusion that the appeal should be allowed.

Conditions

28. I have had regard to the various planning conditions that have been suggested by the main parties. I have considered them against the tests in the Framework and the advice in the Planning Practice Guidance. I have made such amendments as necessary to comply with those documents, to ensure that details are submitted to and considered by the Council where relevant and for clarity and consistency.
29. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in the interests of certainty. A condition relating to drainage is necessary to ensure that there is appropriate drainage installed on the site. Conditions requiring the submission of external materials and landscaping details are also necessary in the interests of the character and appearance of the area.
30. A condition requiring the three proposed windows in the west elevation to be finished in obscure glazing, as shown in the approved plans, is necessary in order to protect the living conditions of adjoining occupiers. However, I have amended the Council's suggested wording for that condition in the interests of clarity and consistency and because it is not necessary for the first-floor window on that elevation to be obscured in the top section. A condition relating to the use of the garage is also necessary for the same reason.
31. A condition requiring adherence with the submitted ecology report is necessary to safeguard the interests of wildlife. A condition relating to contamination is also necessary to ensure that any unexpected contamination uncovered during works on the site is dealt with appropriately.
32. The PPG indicates that conditions removing permitted development rights should only be used in exceptional circumstances. The Council has suggested three such conditions, and given the constrained nature of the site and its proximity to surrounding residential uses, conditions restricting certain such rights – preventing future extensions to the approved dwelling and the insertion of new openings/windows in its west elevation – are necessary and reasonable in order to protect the living conditions of adjoining occupiers. However, a blanket removal of all permitted development rights for development within the curtilage of the dwellinghouse would be unreasonable and unnecessary given that many of the rights only allow for relatively minor additions and alterations. I also have little substantive evidence that such elements would result in any significant harm were they to be provided under permitted development rights in the future. I have therefore declined to impose the blanket condition removing all such rights.

Conclusion

33. For the above reasons, the appeal is allowed.

T Gethin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Existing Location Plan (Drawing No DGA P01, received by the Council on 2/10/2020); Existing Site Plan (Drawing No DGA P04); Proposed Site Plan (Drawing No DGA P08 Rev B, received by the Council on 6/1/2021); Proposed Ground Floor Plan (Drawing No DGA P06 Rev B, received by the Council on 6/1/2021); Proposed First and Roof Plan (Drawing No DGA P07 Rev B, received by the Council on 6/1/2021); Proposed Lower Ground Entry Level Plan (Drawing No DGA P09 Rev B, received by the Council on 6/1/2021); Proposed elevations (Drawing No DGA P10 Rev C, received by the Council on 22/2/2021); Proposed elevations (Drawing No DGA P11 Rev C, received by the Council on 22/2/2021); Proposed elevations (Drawing No DGA P12 Rev C, received by the Council on 22/2/2021); Comparison Elevations (Drawing No DGA P14 Rev B); and Planning Queries (Drawing No DGA P15 Rev B).
- 3) No development shall commence beyond the demolition of the existing building until the details of the surface water and foul water system to be installed have been submitted to and approved in writing by the Local Planning Authority. The foul and surface water drainage shall be submitted in accordance with the approved plans, provided prior to occupation and thereafter retained in accordance with the approved details.
- 4) No development shall commence above slab level until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the details so approved.
- 5) No development shall commence above slab level until a landscaping scheme for the site, to include boundary planting, has been submitted to and approved in writing by the Local Planning Authority. The landscaping shall be implemented in accordance with the agreed details. The approved landscaping scheme shall be implemented in the next available planting scheme after completion of the development hereby approved and shall be maintained and replaced as necessary for a period of 5 years from the date of implementation.
- 6) Prior to occupation of the development hereby permitted, the windows in the west elevation shall be obscure glazed as shown in the approved plan Proposed elevations (Drawing No DGA P12 Rev C) and thereafter retained as such.
- 7) The garage hereby approved shall be used for the parking of vehicles and domestic storage only and shall not be used for any other purpose without the express consent of the Local Planning Authority.
- 8) The recommendations, mitigation and enhancement measures of the submitted Wildlife Survey (by Butler Ecology, dated 3rd September 2020) shall be fully implemented prior to occupation of the development hereby permitted and adhered to at all times. In the event that it is not possible to do so all work shall immediately cease and not recommence until such time as an alternative strategy has been agreed in writing with the local planning authority.

- 9) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted, and obtained written approval from the Local Planning Authority for, an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with. Following completion of measures identified in the approved remediation strategy and verification plan and prior to occupation of any part of the development hereby permitted, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order with or without modification), no windows or other openings other than those authorised by this permission shall at any time be inserted in the west elevation of the development hereby permitted without the grant of a separate planning permission from the Local Planning Authority.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order with or without modification), no development of the types described in Classes A and B of Part 1, Schedule 2 of the Order shall be undertaken without the grant of a separate planning permission from the Local Planning Authority other than those expressly authorised by this permission.

END OF SCHEDULE